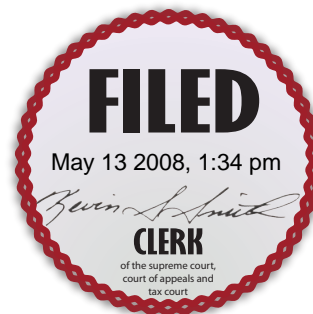


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

ANIYA CRAYTON,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A02-0708-CR-699

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Charles Wiles, Judge
Cause No. 49G03-0704-FD-064320

May 13, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Following his plea of guilty to three counts of battery, one count of criminal confinement, and one count of strangulation, Crayton appeals his aggregate sentence of thirteen years. Specifically, Crayton argues that his consecutive sentences for domestic battery and battery as a Class C felony violate Indiana's double jeopardy clause and that his sentence is inappropriate. Concluding that he is prohibited from raising a double jeopardy argument because he entered into a plea agreement from which he derived a benefit and that his sentence is not inappropriate, we affirm the judgment of the trial court.

Facts and Procedural History

On April 14, 2007, Crayton called Donica Archie, the mother of his infant son, requesting to see his son. Thereafter, Crayton went to Archie's home, and an argument ensued. During the course of the argument, Crayton physically assaulted Archie by punching her in the face with a closed fist, pulling her hair, choking her so hard that she had difficulty breathing, and gouging her eyes with his thumb, causing her extreme pain.

The State initially charged Crayton with Count I: criminal confinement as a Class D felony,¹ Count II: domestic battery as a Class D felony,² and Count III: battery as a Class A misdemeanor.³ The State later amended its charging information and added

¹ Ind. Code § 35-42-3-3.

² Ind. Code § 35-42-2-1.3.

³ Ind. Code § 35-42-2-1.

Count IV: battery as a Class C felony and Count V: strangulation, a Class D felony.⁴

Crayton and the State entered into a plea agreement, which was rejected by the trial court.

Thereafter, the State again amended its charging information and alleged that Crayton was a habitual offender, with the two prior unrelated felony convictions being a 1997 criminal confinement conviction and a 2005 resisting law enforcement conviction. Crayton and the State entered into a second plea agreement whereby Crayton pled guilty to all counts, including the habitual offender count. In exchange, the State agreed not to prosecute him for two pending felony charges for dealing and possessing marijuana. The plea agreement called for a “[c]ap of Fourteen (14) years initial executed time, all other terms open to the court.” Appellant’s App. p. 62. The trial court accepted the plea agreement. In its sentencing order, the trial court identified as aggravators Crayton’s prior criminal history (including two felony convictions and several misdemeanor convictions for possession of marijuana, battery, resisting law enforcement, and disorderly conduct) and the fact that he was on probation at the time this offense was committed. Tr. p. 87. As for mitigating circumstances, the trial court identified the remorse Crayton showed at the time he entered his guilty plea, the fact that he has shown at various times that he is a caring person, and his undiagnosed mental illness. Finding that the aggravators outweighed the mitigators, the trial court sentenced Crayton to one year for Count III; one and one-half years for Counts I, II, and V; and four years for Count IV. The court enhanced Count IV by twelve years and suspended six years of the sentence. Counts I, II, and IV were ordered to be served consecutively, and Counts III

⁴ Ind. Code § 35-42-2-9.

and V were ordered concurrent, for a total executed sentence of thirteen years. Crayton now appeals.

Discussion and Decision

Crayton raises two issues on appeal: (1) whether his convictions for domestic battery and battery as a Class C felony violate Indiana's prohibition against double jeopardy and (2) whether his sentence is inappropriate.

I. Double Jeopardy

First, Crayton contends that his convictions for domestic battery and battery as a Class C felony violate Indiana's prohibition against double jeopardy. However, generally, a defendant who pleads guilty is not allowed to raise a double jeopardy challenge to his convictions. Specifically, the Indiana Supreme Court has explained, "[D]efendants who plead guilty to achieve favorable outcomes give up a plethora of substantive claims and procedural rights, such as challenges to convictions that would otherwise constitute double jeopardy." *Lee v. State*, 816 N.E.2d 35, 40 (Ind. 2004) (citation omitted). Crayton achieved a more favorable outcome in return for his guilty plea. His guilty plea was made in exchange for a fourteen-year sentencing cap, and the State agreed to not prosecute two pending felony charges against him. Accordingly, he may not now raise a double jeopardy claim.

II. Inappropriate Sentence

Next, Crayton contends that his thirteen-year executed sentence is inappropriate. Although a trial court may have acted within its lawful discretion in imposing a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution authorize independent appellate

review and revision of sentences through Indiana Appellate Rule 7(B), which provides that a court “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” *Reid v. State*, 876 N.E.2d 1114, 1116 (Ind. 2007) (citing *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh’g*, 875 N.E.2d 218 (Ind. 2007)). The burden is on the defendant to persuade us that his sentence is inappropriate. *Id.* (citing *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

As for the nature of the offenses, Crayton’s actions illustrate a tendency towards extreme violence and are highly disturbing. Crayton physically assaulted the mother of his child by punching her in the face with a closed fist, pulling her hair, choking her, and gouging her eyes with his thumb. As for his character, Crayton argues that “[a]lthough the trial court acknowledged Mr. Crayton seemed to have an undiagnosed mental problem, and that he had expressed remorse and pleaded guilty, the trial court sentenced him to the maximum habitual [sentence] and just one year less than the maximum executed sentence possible under the plea agreement.” Appellant’s Br. p. 8. In other words, Crayton asserts that his undiagnosed mental illness, expression of remorse, and guilty plea should result in him receiving a lower sentence. However, Crayton has an extensive criminal history, including both felony and misdemeanor convictions, and was on probation for a similar offense at the time he committed these offenses. Crayton’s conduct reflects a disregard for the law and an unwillingness to conform his behavior to

acceptable standards. His sentence is not inappropriate in light of the nature of the offenses or his character.

Affirmed.

SHARPNACK, Sr. J., and BARNES, J., concur.